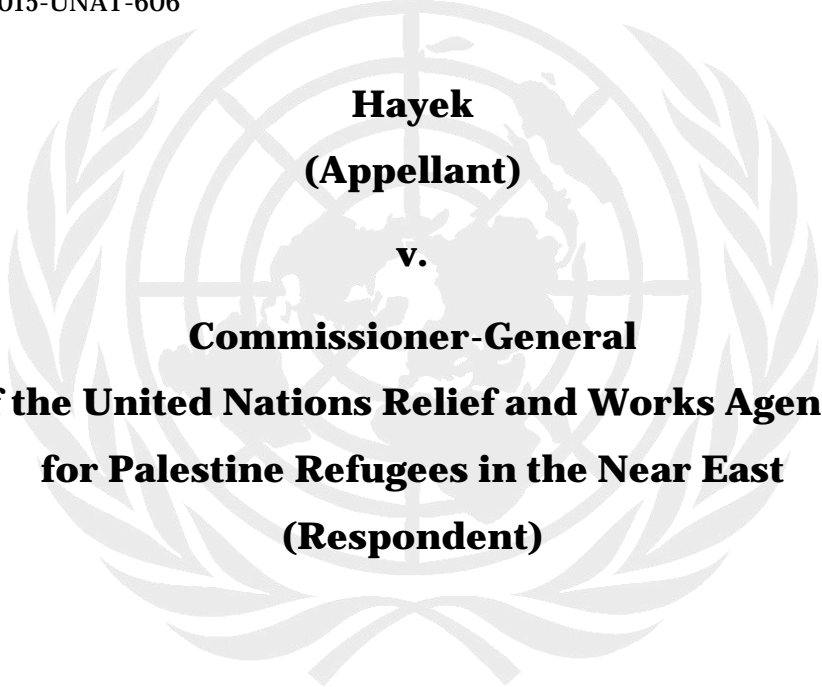




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-606



**Hayek
(Appellant)**
v.
**Commissioner-General
of the United Nations Relief and Works Agency
for Palestine Refugees in the Near East
(Respondent)**

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Sophia Adinyira Judge Deborah Thomas-Felix
Case No.:	2015-706
Date:	30 October 2015
Registrar:	Weicheng Lin

Counsel for Mr. Hayek:

Self-represented

Counsel for Commissioner-General:

Lance Bartholomeusz

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Mohammad Saleh Hayek of Judgment No. UNRWA/DT/2015/022, rendered by the Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA DT or Dispute Tribunal and UNRWA or Agency, respectively) in Amman on 16 March 2015, in the case of *Hayek v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*. On 29 March 2015, Mr. Hayek filed his appeal and on 8 June 2015, the Commissioner-General filed his answer to the appeal.

Facts and Procedure

2. The Appeals Tribunal finds the following relevant facts, based upon information in Mr. Hayek's application and the record.

3. Mr. Hayek was hired initially by the Agency in 1981 on a temporary monthly-paid appointment. Subsequently, his appointment became an indefinite temporary appointment and he became a long-term staff member of the Agency. His employment history shows, *inter alia*, several transfers, warnings about his conduct and unsatisfactory performance, letters of censure, reprimands for inaccuracy in his work and disciplinary action for falsifying documents, culminating, effective 16 May 2002, with his termination from service "in the interest of the Agency".

4. On 30 May 2002, Mr. Hayek sent a letter to the Director of UNRWA Affairs, Syria, requesting administrative review of the termination decision. On 30 June 2002, the Director affirmed the termination decision.

5. On 3 August 2002, Mr. Hayek appealed the decision to terminate his appointment to the Agency's former Joint Appeals Board (JAB). On 19 December 2004, Mr. Hayek filed observations on the Agency's answer to his appeal, and the JAB convened in full quorum on 24 April 2005, to consider the appeal and submissions. In an undated report issued thereafter, the JAB unanimously recommended upholding the Agency's decision to terminate Mr. Hayek's service. While the record before us does not show the date on which the Commissioner-General adopted the JAB's report, it is however clear that Mr. Hayek did not

seek review by the former Administrative Tribunal of the Commissioner-General's adoption of the JAB report.

6. On 3 August 2014, Mr. Hayek filed an application before the UNRWA DT. On 25, 26 and 27 November 2014, Mr. Hayek filed additional submissions, which included new documents. The UNRWA DT granted the Commissioner-General an extension of time to respond to the application and additional submissions, and on 23 January 2015, the Commissioner-General timely replied to the application.

7. On 16 March 2015, the UNRWA DT issued Judgment No. UNRWA/DT/2015/022, dismissing the application as not receivable *ratione materiae* and *ratione temporis*.

8. On 29 March 2015, Mr. Hayek filed an appeal of Judgment No. UNRWA/DT/2015/022, and on 8 June 2015, the Commissioner-General filed his answer to the appeal.

9. On 11 July 2015, Mr. Hayek filed a motion to file additional pleadings, which he submitted with his motion. On 17 August 2015, the Commissioner-General timely filed a motion to dismiss the Appellant's motion to file additional pleadings, with comments.

Submissions

Mr. Hayek's Appeal

10. Mr. Hayek challenges the decision to terminate him from service, as well as the JAB report. He claims that the JAB "is the second face of the administration" and did not discuss the reasons for the decision to terminate his services. Thus, he applied to the UNRWA DT for redress, but did not get any assistance. The reasons for his termination were invalid and contrary to the Agency's laws and regulations. Unfortunately, the UNRWA DT unfairly relied only upon the "deadline" for filing his application, without giving any consideration to his claims.

11. Mr. Hayek exceeded the time limit to file his UNRWA DT application because he is a former employee without knowledge of the rules. Nevertheless, since the UNRWA DT did not begin its work until 2010, the three-year limitation period should run from that date, which means that his application should have been filed by 2013. Since it was filed in 2014, it was only one year late, and this delay resulted from "the war and the situation in Syria, where [people] are driven from one place to another [...] and the lack of electricity and the Internet[.]

as well as due to the lack of a lawyer specializing [in international] affairs". Mr. Hayek's situation is now dire since he does not have any income.

12. Mr. Hayek seeks compensation for the rest of his service, all salaries, bonuses, promotions and compensation due since the date of his separation on 16 May 2002, and an order appointing his son to work for the Agency.

The Commissioner-General's Answer

13. The UNRWA DT did not err in concluding that the application was time-barred and not receivable pursuant to Article 8(4) of the Statute of the UNRWA DT (UNRWA DT Statute), which prohibits the receipt of an application filed more than three years after the applicant's receipt of the administrative decision. Thus, the application was time-barred and not receivable *ratione temporis*.

14. Article 8(4) of the UNRWA DT Statute is an absolute bar to receipt of Mr. Hayek's application and the UNRWA DT had no discretion to suspend, waive or extend the deadline in light of this bar. Thus, it does not assist Mr. Hayek to claim that events in Syria precluded him from timely filing the application in 2013. The UNRWA DT did not err in concluding the application was not receivable *ratione temporis*.

15. Further, the UNRWA DT did not err in concluding that the application was not receivable under Article 2(5) of the UNRWA DT Statute, which provides that, as a transitional matter, cases filed prior to the establishment of the UNRWA DT are receivable under Article 8 when the JAB has not submitted a report to the Commissioner-General; thus, cases in which the JAB has submitted a report are not receivable. Since the JAB had previously submitted a report to the Commissioner-General affirming the termination of Mr. Hayek's services, Mr. Hayek's application was barred by the principle of *res judicata* and was not receivable *ratione materiae*.

16. Mr. Hayek has failed to identify any grounds for the appeal within the meaning of Article 2(1) of the Appeals Tribunal Statute (Statute).

17. Mr. Hayek has manifestly abused the appeals process by not stating any statutory grounds for appeal and by bringing an appeal that is frivolous. Thus, the Appeals Tribunal should award costs against Mr. Hayek under Article 9(2) of its Statute. Although defending the appeal costs the Agency USD 9,600, which is money that the Agency lacks since it operates at

a deficit, the Commissioner-General does not seek an award of costs in that amount, but rather leaves the amount of the award of costs to the discretion of the Appeals Tribunal.

18. The Commissioner-General requests that the Appeals Tribunal reject Mr. Hayek's claims and dismiss the appeal in its entirety. Additionally, the Commissioner-General requests that the Appeals Tribunal award costs against Mr. Hayek for manifestly abusing the appeals process.

Considerations

Preliminary matter

19. On 11 July 2015, Mr. Hayek filed a motion to file a reply to the Commissioner-General's answer, asserting that the reply would assist his appeal by clearly explaining the full import of annexes 12 and 16 to his appeal. On 17 August 2015, the Commissioner-General filed a motion for dismissal of Mr. Hayek's motion to file an additional pleading.

20. The Rules of Procedure of the Appeals Tribunal (Rules) provide for the parties to file appeals, answers, cross-appeals and answers to cross-appeals. They do not provide for an appellant to file a reply to an answer. Nevertheless, the filing of additional pleadings may be allowed under Article 31(1) of the Rules, as well as Practice Direction No. 1,¹ which pertain to the filing of documents. Under Section II.A.3 of Practice Direction No. 1, an appellant may bring "[a] motion requesting the permission of the Appeals Tribunal to file a pleading after the answer to the appeal", and the Appeals Tribunal may grant the motion "if there are exceptional circumstances justifying the motion".

21. This Tribunal finds there are no "exceptional circumstances" to warrant the granting of Mr. Hayek's motion for leave to file a reply to the Commissioner-General's answer. The additional pleading proposed by Mr. Hayek is intended to further explain the import of two annexes to his appeal. These documents are already part of the record and need no additional explanation. Thus, Mr. Hayek's motion to file a reply to the answer is denied.

¹ Practice Direction on Filing of Documents and Case Management, 26 June 2014.

Receivability of the UNRWA DT application

22. Article 8(4) of the UNRWA DT Statute, which Area Staff Regulation 11.3 encompasses into the Area Staff Regulations, provides that “[n]otwithstanding paragraph 3 of the present article, an application shall not be received if it is filed more than three years after the applicant’s receipt of the contested administrative decision”. Article 3(5) of the UNRWA DT’s Rules of Procedure, integrated into the Area Staff Regulations through Area Staff Rule 11.4, provides the same.

23. The UNRWA Dispute Tribunal found that Mr. Hayek’s application of 3 August 2014 was not receivable *ratione temporis* because it was filed more than three years after Mr. Hayek’s receipt of the 2002 administrative decision terminating his services and the UNRWA Dispute Tribunal “has no discretion to waive the regulatory time limit of three years”.² These legal conclusions are unassailable.³

24. When considering Article 8(4) of the United Nations Dispute Tribunal (UNDT) Statute, which is identical to Article 8(4) of the UNRWA DT Statute, we have held that “the UNDT cannot waive the time limit to file an appeal, more than three years after the applicant’s receipt of the contested administrative decision”.⁴ In other words, Article 8(4) of the UNDT Statute is an “absolute restriction on [...] judicial discretion”, which precludes the UNDT from “enter[ing] into a review of the possible existence of exceptional circumstances justifying an extension of the time limit”.⁵ The same rationale applies to Article 8(4) of the UNRWA DT Statute, as the UNRWA Dispute Tribunal correctly found.⁶

² Impugned Judgment, paras. 17 and 19.

³ *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-579, paras. 17, 20-21.

⁴ *Reid v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-389, para. 14, and cite therein. See also *Kouadio v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-558, para. 19 and *Ibom v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-551, paras. 19-20.

⁵ *Reid, ibid.*, para. 14.

⁶ See *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-579, paras. 22-23.

25. The UNRWA DT also found that the application was not receivable *ratione materiae* under Article 2 of the UNRWA DT Statute, stating:⁷

... In the present case, it is not disputed by [Mr. Hayek] that his appeal was adjudicated by the Joint Appeals Board, which issued its report making a unanimous recommendation to the Commissioner-General to uphold the contested decision and dismiss the appeal. Therefore, pursuant to Article 2 of the [UNRWA DT] Statute the application is not receivable *ratione materiae*.

26. Article 2(5) of the UNRWA DT Statute is a “transitional measure” designed to address cases pending before the JAB at the time the UNRWA DT was established and started to review cases. However, as the UNRWA DT correctly concluded,⁸ Mr. Hayek’s case was not pending before the JAB at the time the UNRWA DT became operative on 1 June 2011. Thus, the UNRWA DT correctly held that the application was not receivable *ratione materiae*.

27. Further, as Mr. Hayek did not challenge the Commissioner-General’s decision to adopt the JAB report, by appealing in a timely manner to the former Administrative Tribunal, finality attached to that decision. Now, several years later, Mr. Hayek cannot start over again and turn to the UNRWA Dispute Tribunal for review of the same administrative decision he had challenged before the JAB. Accordingly, the UNDT correctly determined that Mr. Hayek’s application was not receivable *ratione materiae*.

Costs on appeal

28. On appeal, the Commissioner-General seeks costs against Mr. Hayek in an amount to be determined by the Appeals Tribunal, pursuant to Article 9(2) of its Statute, on the ground that Mr. Hayek “has manifestly abused the appeals process”. Although the Appeals Tribunal determines that Mr. Hayek’s appeal is frivolous, it cannot be said that the appeal is an abuse of process. Thus, the Commissioner-General’s request for an award of costs is denied.

Judgment

29. The appeal is denied and Judgment No. UNRWA/DT/2015/022 is affirmed.

⁷ Impugned Judgment, para. 21.

⁸ *Ibid.*

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Thomas-Felix

Entered in the Register on this 30th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar